MUKA BIN MUSA v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) November 6, 1963]

[Jesselton — Federal Court Criminal Appeal No. 8 of 1963]

Evidence — Confession — Double interpretation — Possibility of doubt.

Penal Code, s. 396 — Gang robbery with murder by pirates — Retracted confession — Double interpretation.

In this case the appellant was convicted of gang robbery with murder contrary to section 396 of the Penal Code. The only evidence connecting the appellant with the offences was a confession he made before a magistrate. This confession was in a sense retracted at the trial in that the appellant set up a defence of duress. The confession was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English. On appeal it was urged that there was a possibility of misinterpretation which was so substantial as to introduce an element of doubt.

Held: in the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement it could not be said that there was any possibility of such substantial misinterpretation as to destroy the force of the confession.

FEDERAL COURT.

Shelly Yap for the appellant.

W. A. Raby (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): The appellant was convicted in the High Court at Tawau for the offence of gang robbery with murder contrary to section 396 of the Penal Code which states:—

"If any one of five or more persons, who are conjointly committing gang-robbery, commits murder in so committing gang-robbery, every one of those persons shall be liable to death with or without a fine."

The appellant is now appealing against his conviction.

The facts of the case are straightforward. On the 9th April, 1962, five persons who, without causing unnecessary offence to anybody's feelings, can be correctly described as pirates came by boat to a small village on Pulau Omadal. They were all armed. One of the party remained in the boat while the others entered the village, shot dead the Chinese shopkeeper and a Bajau man who worked in the shop, removed some goods and left in their boat.

On the night of the 11th February, 1963, a British warship came upon a boat on the high seas. One of the persons in this boat was the appellant who was taken into custody.

Subsequently he made a statement before a magistrate the admissibility of which was not contested at the trial. That confession was the only evidence which connected the appellant with the offences described. It was in a sense retracted at the trial in that the appellant set up a defence of duress, and in the circumstances it attracted very careful scrutiny. We ourselves have scrutinised it with care, particularly in view of the fact that it was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English.

It has been urged upon us, although there is no evidence to that effect, that there was a possibility of misinterpretation and that this possibility is so substantial as to introduce an element of doubt.

In his statement the appellant said:—

"I followed with Abdul Hallim, Lujani and Sahibin and Sawara to pirate Kg. Omadal, Semporna District, in March 1962. We came to the kampong at about 3 p.m. We ate first then we raided the kampong. Lujani and Abdul Hallim went into the shop. Abdul Hallim told us he had shot a Chinese dead. I heard the sound of the shot as I was waiting in the boat, guarding the boat. Sawara shot the Bajau. Sahibin and Sawara were waiting outside the shop while the other two were raiding the shop. Altogether I heard two shots fired. One killed the Chinese, one the Bajau. We brought 5 weapons altogether. One Garrand, 'Musil' described as like a rifle American make. .22 rifle carbine. There were over 100 rounds of ammunition. We brought the weapon to aid us in our raid of the village. After the shots my friends brought out clothing from the shop and put it in the boat. We loaded up the boat and sailed back to the Philippines. ...."

In the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement as quoted, we regret that we are unable to say that we can see any possibility of such substantial misinterpretation as to destroy the force of the confession.

In the circumstances the appeal is dismissed.

Appeal dismissed.

BISHAN SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) February 28, 1964]

[Raub — Criminal Appeal No. 3 of 1964]

Road Traffic — Driving licence — Production of, for police examination — Whether driver arrested or detained — Road Traffic Ordinance, 1958, ss. 36(1), 48(1) and 56.

Road Traffic — Traffic signs — Police road barrier — Whether motorist under obligation to stop — Traffic Signs (Size, Colour and Type) Rules, 1959, r. 3 and Schedule.

Failure to comply with the provisions of section 56* of the Road Traffic Ordinance is fatal to a prosecution under section 36(1) of the Ordinance.

* 56. Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence — (a) a summons for the offence was served on him; or (b) a notice in writing of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

When any person in charge of a motor vehicle on a road is required by a police officer under section 48(1) of the Road Traffic Ordinance to produce his driving licence, for examination, this does not mean that the driver is arrested nor does it mean that he is detained when particulars of his driving licence are taken. It simply means that he is asked to give particulars and naturally he is bound to be static when giving such particulars. If he refuses to give such particulars and moves on then he is liable to be arrested under section 23(i)(e) of the Criminal Procedure Code (Cap. 6).

Per Hashim J.: "I am of the opinion that the barrier put up by the police (with the words *'Berhenti Pemereksaan Polis'*) is not a traffic sign under the Traffic Signs Rules, 1959 and therefore the Rules do not apply. The police have power to erect a road barrier under section 38(1) of the Police Ordinance 1952 but in my opinion a motorist is not obliged to stop at the road barrier unless and until he is signalled to do so by the police under section 38(2) of the Police Ordinance."

CRIMINAL APPEAL.

Edgar Joseph, Jr. for the appellant.

Sheikh Abdul Rahman bin Abu Bakar (Deputy Public Prosecutor) for the respondent.

Hashim J.: The appellant was charged under section 36(1) of the Road Traffic Ordinance, 1958, that he drove the bus without due care and attention.

It is not disputed that the provisions of section 56 of the Ordinance have not been complied with. The prosecution maintained that the appellant was arrested when appellant's particulars were taken immediately after the accident. Under section 48(1) of the Ordinance any person in charge of a motor vehicle on a road shall, on being so required by a police officer produce for examination his driving licence. This in my opinion does not mean that the driver is arrested nor does it mean that he is detained when particulars of his driving licence are taken. It simply means that he is asked to give particulars and naturally he is bound to be static when giving such particulars. If he refuses to give such particulars and moves on then he is liable to be arrested under section 23(i)(e) of the Criminal Procedure Code (Cap. 6). This section sets out the various circumstances under which a person can be arrested without a warrant of arrest. In this particular case the appellant did stop immediately after the accident, his particulars were taken by the police corporal who told him he would be summoned for driving his bus without due care and attention and was then allowed to proceed. The corporal himself said he did not arrest the defendant. Under such circumstances I am of the opinion that failure to comply with the provisions of section 56 of the Ordinance is fatal in a prosecution under section 36(1) of the Ordinance.

There is another curious aspect in this case. In the police report it is stated that the appellant did not stop at the road barrier. The police report indicated that the appellant should be charged for failing to stop at the road barrier but subsequently he was charged for driving without due care and attention.

Now the question is whether the road barrier put up by the police is a traffic sign as defined in the Ordinance. According to the police report the barrier had these words written on it, "Berhenti Pemereksaan Polis". This police sign does not appear to be in the schedule to the Traffic Signs (Size, Colour and Type) Rules, 1959. Rule 3 reads:

"Subject as hereinafter provided and subject to any rules which the Minister may make under the provisions of section 138 of the Ordinance the traffic signs which may be erected under the provisions of section 65 of the Ordinance shall conform as to size, colour and type with the indications given in Parts I to VI of the Schedule hereto."

Incidentally section 138 of the Ordinance would appear to deal with liability of registered owner and others. Section 151 of the Ordinance empowers the Minister to make rules. Perhaps there is a printed error? I am of the opinion that the barrier put up by the police is not a traffic sign under the Traffic Signs Rules, 1959, and therefore the Rules do not apply. The police have the power to erect a road barrier under section 38(1) of the Police Ordinance, 1952, but in my opinion a motorist is not obliged to stop at the road barrier unless and until he is signalled to do so by the police under section 38(2) of the Police Ordinance, 1952.

The appeal is allowed and the conviction and sentence set aside.

Appeal allowed.

Provided that — (i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that — (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or (b) the accused by his own conduct contributed to such failure; and (ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved:

Provided further that this section shall not apply in any case in which the person prosecuted was, in connection with the incident in respect of which a charge against such person is preferred, arrested either on the days on which such incident occurred or within fourteen days of such date.

YAP CHIN HOCK & ANOR. v. CHENG WANG LOONG

[O.C.J. (Ambrose J.) March 31, 1964]

[Singapore — Suit No. 381 of 1961]

Contract — Timber — Contract to supply light red meranti — Supply of light red dark red meranti — Rejection — Damages for breach of contract.

Sale of goods — Grading of timber by grader with shipping marks — Whether unconditional appropriation — Sale of Goods Act, 1893, s. 18 r. 5(1) and s. 20.

Malayan Grading Rules for Sawn Hardwood Timber, rr. 9, 11(b), 12 and 18(a).